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Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

AUDIT REFERRAL: AR 09-05  
DATE REFERRED: July 16, 2009  
DATE ACTIVATED: September 28, 2009  
DATE RESPONSE  
RECEIVED: September 23, 2009

EXPIRATION OF SOL: July 5, 2010 -  
December 14, 2011

SOURCE:

INTERNALLY GENERATED

RESPONDENT:

Charlie Stuart for Congress and Jeffrey S.  
Berger, in his official capacity as treasurer.

RELEVANT STATUTES:

2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b  
11 C.F.R. § 103.3(b)  
11 C.F.R. § 110.1(b)  
11 C.F.R. § 110.1(g)  
11 C.F.R. § 110.1(k)

INTERNAL REPORTS CHECKED:

Audit Documents

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

This matter was generated by a Commission audit, pursuant to 2 U.S.C. § 438(b), of Charlie Stuart for Congress covering the period of May 10, 2005 through December 31, 2006. The Commission approved the Final Audit Report ("FAR") on June 18, 2009, and on July 16, 2009, the Audit Division referred Findings 1 and 2 of the FAR to the Office of the General Counsel for enforcement. See Attachment 1. Based on the information in the referral and the committee's response to the notice of referral, we recommend that the

Commission open a MUR and find reason to believe that Charlie Stuart for Congress and Jeffrey Berger, in his official capacity as treasurer ("SFC"), violated 2 U.S.C. § 441b(a) by accepting prohibited corporate contributions and 2 U.S.C. § 441a(f) by accepting contributions that exceeded the limits set forth at 2 U.S.C. § 441a(a)(1)(A).

## **II. DISCUSSION**

### **A. Receipt of Prohibited Contributions (Finding 1)**

The Federal Election Campaign Act of 1971, as amended, prohibits political committees from knowingly accepting contributions from corporations. *See* 2 U.S.C. § 441b(a). According to the audit referral, the Committee received 65 apparent prohibited contributions totaling \$35,950. Of these, 17 contributions totaling \$15,650 were received from limited liability companies (LLCs) and 48 contributions totaling \$20,300 from entities that the Audit Division has confirmed were incorporated when the contributions were made.

Contributions from an LLC that elects to be treated as a corporation by the Internal Revenue Service ("IRS") or from an LLC with publicly traded shares are treated as prohibited corporate contributions. *See* 11 C.F.R. § 110.1(g)(3). In contrast, contributions from an LLC that elects to be treated as a partnership by the IRS or an LLC that does not elect to be treated as either a partnership or corporation are permissible and are treated as contributions from a partnership under 11 C.F.R. 110.1(e). *See* 11 C.F.R. § 110.1(g)(2). Similarly, contributions from an LLC with a single natural member that does not elect to be treated as a corporation are permissible and are attributed to the single member. *See* 11 C.F.R. § 110.1(g)(4). An LLC must affirm to a recipient committee when it makes a contribution that it is eligible to do so and must provide information as to how the contribution must be attributed. *See* 11 C.F.R. § 110.1(g)(5).

1 Committee treasurers are responsible for examining all contributions for evidence of illegality.

2 See 11 C.F.R. § 103.3(b).

3 The Audit Division explained the LLC regulations to SFC at the May 23, 2008 audit exit  
4 conference and provided it with a schedule of the apparent prohibited contributions and the  
5 underlying documentation. The Interim Audit Report (IAR), sent to SFC on March 20, 2009,  
6 also set out the LLC regulations. The IAR recommended that the Committee demonstrate that  
7 all of the apparent prohibited contributions were not from prohibited sources. With respect to the  
8 LLC contributions, the IAR specified that SFC could demonstrate that these were permissible by  
9 providing documentation from each entity that it had elected not to be treated as a corporation  
10 under IRS rules. Absent evidence that the contributions were permissible, the IAR  
11 recommended that SFC refund the prohibited contributions or report the refunds as a debt if  
12 funds were unavailable to do so.

13 The records maintained and produced by SFC during the audit were incomplete. In  
14 addition, SFC failed to respond to the IAR despite being twice granted extensions of time in  
15 which to do so, and did not respond to emails sent by the auditors after the final IAR due date of  
16 May 18, 2009. As a result, SFC did not document that the \$15,650 in contributions from LLCs  
17 were permissible or refund any of the apparent prohibited contributions during the audit.

18 The candidate, however, personally responded to the notice of referral on behalf of SFC.  
19 Because his response was styled as a belated response to the audit and posed a question to the  
20 audit division about the proper mechanism to accomplish refunds, we contacted him to clarify  
21 the procedural posture and timing of the matter, *i.e.*, that the matter was no longer in the audit  
22 process and had been referred to the Office of General Counsel. In this conversation, Mr. Stuart  
23 explained that communications with his campaign manager had broken down and expressed a

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1 desire to cooperate with us to resolve this matter quickly. He agreed that the contributions in  
2 Finding 1 were from prohibited sources and said that SFC would begin to refund them, and  
3 asked how he should go about doing so. In the interest of fairness, we reiterated the information  
4 provided in the audit exit conference – namely, that the LLC contributions identified in the audit  
5 could have been permissible if the LLCs had not elected corporate tax status. The candidate  
6 advised us that he would contact the entities at issue and obtain written documentation from any  
7 LLC that had not elected to be treated as a corporation.

8 Based on the information in the referral and the candidate's admission, we recommend  
9 that the Commission find reason to believe that SFC violated 2 U.S.C. § 441b by knowingly  
10 receiving 65 apparent prohibited contributions totaling \$35,950.

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12  
13 **B. Receipt of Excessive Contributions (Finding 2)**

14 Political committees are prohibited from knowingly accepting a contribution from an  
15 individual with respect to any Federal election that exceed, in the aggregate, the limitation set  
16 forth at 2 U.S.C. § 441a(a)(1)(A). See 2 U.S.C. § 441a(f). In the 2006 election cycle, the  
17 individual per-election contribution limit was \$2,100.

18 Committee treasurers are responsible for examining each contribution received to  
19 determine whether it exceeds the applicable contribution limitation on its face or when  
20 aggregated with other contributions from the same individual. See 11 C.F.R. § 103.3(b). In  
21 addition, a committee may accept contributions designated in writing for a particular election,  
22 but made after that election, only if it has net debts outstanding. See 11 C.F.R. §§ 110.1(b)(3). If  
23 a contribution is excessive or cannot be accepted with respect to a certain election because the

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1 Committee does not have net debts outstanding, a committee treasurer may seek a written  
2 redesignation to another election or a written reattribution to a joint contributor, *see* 11 C.F.R.  
3 §§ 103.3(b)(3), 110.1(b) and 110.1(k), or may presumptively redesignate or reattribute certain  
4 excessive contributions by sending a written notice to the contributor of the amount of the  
5 contribution redesignated or stating how the contribution was reattributed. *See* 11 C.F.R.  
6 §§ 110.1(b)(5)(ii)(B) and (C) and 110.1(k)(3)(ii)(B). In both instances, the redesignation or  
7 reattribution must take place within 60 days of the date the treasurer receives the contribution,  
8 and the committee must advise the contributors that they have a right to a refund. *See* 11 C.F.R.  
9 §§ 110.1(b)(5) and 110.1(k). If a committee cannot redesignate or reattribute an excessive  
10 contribution, or a contribution designated in writing for a particular election that was made after  
11 that election and that exceeds the committee's net debts outstanding, the treasurer must refund  
12 the contribution to the contributor within 60 days of receipt. *See* 11 C.F.R. §§ 103.3(b)(3);  
13 110.1(b)(3)(i).

14 According to the audit referral, SFC accepted \$13,000 in excessive contributions from  
15 eight individuals. The Audit Division concluded, based on a determination that SFC had no net  
16 outstanding primary or general election debt, that only two excessive contributions, totaling  
17 \$2,300, were curable through presumptive redesignation or reattribution, and recommended in  
18 the IAR that SFC cure these excessive contributions during the audit. Following the audit  
19 referral, however, the Audit Division revisited the net debts outstanding issue and determined  
20 that SFC had sufficient net debts such that it could have cured all of the excessive contributions.

21 As a result of the revised net debts outstanding determination, one of the contributions  
22 referred is not, in fact, excessive. Committee records show that the first of two \$2,100  
23 contributions from Paul Deutsch, made and received after the September primary election,

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1 contained the handwritten notation "primary election" in the check memo line. Given that the  
2 check was designated in writing for the primary election and the amount of the contribution did  
3 not exceed the primary net debts outstanding, SFC properly accepted it. *See* 11 C.F.R.  
4 § 110.1(b)(3)(i).

5 In addition, the Audit Division also determined that the amount of the excessive  
6 contribution attributable to one contributor, Albert Kodosi, was \$900 rather than the \$1,000  
7 included in the referral.

8 SFC thus appears to have accepted excessive contributions totaling \$10,800, all of which  
9 were curable through presumptive redesignation or reattribution. Based on the information in the  
10 referral, we recommend that the Commission find reason to believe that SFC violated 2 U.S.C.  
11 § 441a(f).

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IV. RECOMMENDATIONS


1. Open a MUR in AR 09-05.
2. Find reason to believe that Charlie Stuart for Congress and Jeffrey S. Berger, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a).
3. Find reason to believe that Charlie Stuart for Congress and Jeffrey S. Berger, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).
4. Approve the attached Factual and Legal Analysis.
- 5.
- 6.
7. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

Kathleen M. Guith  
Deputy Associate General Counsel for Enforcement

Date 11/27/09

BY:   
Julie McConnell  
Assistant General Counsel

  
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